THE HONOURABLE SRI JUSTICE

R. SUBHASH REDDY

WRIT PETITION NO. 23773 OF 2001

ORDER:

This Writ Petition is filed seeking Writ of Mandamus, to declare the proceedings No. 10337/A7(94)2000, dated 28-11-2000 issued by the Superintending Engineer (R&B), Seethammadhara, Visakhapatnam, as illegal and arbitrary, and, for consequential direction to the respondents not to recover any amount from the petitioner.

The impugned proceedings is a letter dated 28-11-2000. In the said proceedings, the petitioner was informed to refund an amount of Rs.1,07,892/- in view of the orders passed by the Division Bench of this Court in Writ Appeal No. 618 of 2000, dated 19-6-2000. The petitioner herein earlier filed Writ Petition No.19207 of 1994 questioning collection of cess on seignorage fee. The said Writ Petition was allowed, directing the respondent authorities to refund the amount collected towards cess from the bills payable to the petitioner. On the ground that the said directions were not complied, the petitioner, earlier, filed contempt proceedings in Contempt Case No.22 of 1997. But, however, during the pendency of the contempt proceedings, directions issued in the Writ Petition were complied and sum of Rs.1,07,892/- was paid to the petitioner. Subsequently, the respondents have carried the matter in appeal, by filing Writ Appeal No. 618 of 2000 and the Division Bench of this Court has allowed the Writ Appeal and further observed that it is open for the respondents to recover the said amount. In view of the orders passed by the Division Bench of this Court in Writ Appeal No. 618 of 2000, the petitioner was informed to refund the said amount.

In this Writ Petition, it is the case of the petitioner that in view of the provisions under the Validation Act, enacted by the Parliament, which is titled as Cess and Other Taxes on Minerals (Validation) Act, 1992, the petitioner need not refund the cess,

which was paid to him. The learned Counsel for the petitioner relied on the judgment of the Apex Court in the case of *District Mining Officer Vs. TATA Iron & Steel Co*. In the said judgment, the Apex Court has held that the Act does not authorize recovery of any tax or cess after 04-04-1991.

But, however, in this case, it is to be seen that the petitioner, who is a party to the Writ Appeal, has not questioned the judgment of the Division Bench of this Court. When the judgment of the Division Bench of this Court in Writ Appeal No. 618 of 2000 has become final, it is not open for the petitioner to question the consequential demand issued, by filing separate Writ Petition. If it is the case of the petitioner that the said amount need not be refunded in view of the Validation Act, it is for him to seek appropriate orders, by seeking review of the orders passed by the Division Bench; but, the same is no ground to question the same by filing separate Writ Petition. Virtually the demand made is consequent to the directions issued by the Division Bench in the Judgment dated 19-6-2000 in Writ Appeal No. 618 of 2000, which judgment has become final. On this short ground, the Writ Petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 11-08-2005

GLV/Msnr.